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AZ CORP COMMISSION
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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER COMPANY INC. AN
ARIZONA CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY PLANTS
AND PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR UTILITY
SERVICE BASED THEREON.

IN THE MATTER OF THE APPLICATION OF
PAYSON WATER COMPANY INC., AN ARIZONA
CORPORATION, FOR AUTHORITY TO: (1) ISSUE
EVIDENCE OF INDEBTEDNESS IN AN AMOUNT
NOT TO EXCEED \$1,238,000 IN CONNECTION
WITH INFRASTRUCTURE IMPROVEMENTS TO
THE UTILITY SYSTEM; AND (2) ENCUMBER REAL
PROPERTY AND PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

DOCKET NO. W-03514A-13-0111

Arizona Corporation Commission

DOCKETED

FEB 10 2014

DOCKETED BY

DOCKET NO. W-03514A-13-0142

**OBJECTION TO EXCLUSION
OF INTERVENORS BURT &
GEHRING FROM HEARINGS
HELD ON 2/7/14 AND 2/10/14**

Pursuant to AAC R14-3-105 et seq.

COMES NOW, J. Stephen Gehring and Richard M. Burt, Customers of PAYSON WATER CO.
INC. (PWC) in the Mesa del Caballo System (PWS 04-030) to make their objection to the ALJ Nodes
Exclusion of him from participating any further in the Hearings held on February 7th and 10th, 2014 and
to Motion the Administrative Law Judge to allow Mr. Burt to continue to participate, present evidence
and cross examine witnesses in these Administrative proceedings for the following reasons:

1. On October 18, 2013 J. Stephen Gehring and Richard M. Burt jointly filed their Application and
Motion to Intervene in these Administrative proceeding so cited and Captioned herein and above.
2. On October 29, 2013 Assistant Chief Administrative Law Judge, Dwight D. Nodes ordered that
J. Stephen Gehring and Richard M. Burt were hereby granted Intervention.
3. **R14-3-105 C specifically states that:**

1 C. "Other appearances. Notwithstanding the provisions of subsections R14-3-105(A) and
2 R14-3-105(B), any consumer or prospective consumer may appear at any proceeding and
3 make a statement on his own behalf, at a time designated by the Commission or presiding
4 officer. A person so appearing shall not be deemed a party to the proceedings. When two or
5 more interested persons under this rule have substantially like interests and positions, the
6 presiding officer may declare them a class of interested persons for purposes of the hearing.
7 The members of the class shall designate to be spokesman for the class one of their number, or
8 his attorney, or such greater of their number, or attorneys, as the presiding officer shall
9 determine. More than one class may be established for a hearing."

10
11 4. Mr. Burt at all previous hearings and proceedings has been allowed to participate, make
12 comment, and ask questions and examine witnesses.

13 5. At hearing on February 5th, 2013 ALJ Nodes arbitrarily and without any justifiable explanation
14 excluded Mr. Burt from any further participation and disallowed any further for him to comment,
15 testify, or submit evidence.

16 Interveners' Gehring and Burt have previously established themselves as Consumers, Residents
17 and property owners in Mesa del Caballo system serviced by the Water Utility and are in fact
18 "parties in interest" in these Administrative proceedings.

19 "Economic injury is not the only injury that the law should recognize."¹ "The Office of
20 Communication emphatically affirms the Consumer as a "part in interest" with a right to intervene in
21 agency cases affecting the product consumed."² The Consumers' right is not limited to cases in
22 which they have a "pocketbook" interest; it extends to those in which the agency action bears upon
23 quality, as well as price. Only Consumers may be directly concerned with deteriorations in quality.
24 The implication is far-reaching. Administrative decisions that affect environmental quality should
25 give "consumers" of the environment the same right to be heard before those decisions are made.³

26 The evolving law makes it no longer accurate to assert in agencies a discretionary power to
27 exclude participation in their proceedings. The right to be heard may not be limited to the "obvious
28 party." The competitor and the consumer must now be considered "parties in interest" in cases that
29 affect their competitive or consumer interest. They have a right to participate that may not be

¹ Office of Communication v. FCC, 359 F.2d 994, 1003 (D. C. Cir. 1966).

² Compare National Welfare Rights Org. v. Finch, 429 F.2d 725 (D. C. 1970) (right of welfare clients and organizations to intervene in hearing to determine whether states were complying with requirements of federal law).

³ Palisades Citizens Assn. v. CAB, 420 F.2d 188 (D. C. Cir. 1969).

1 limited to the writing of letters or to second-class appearance as a matter of grace at hearings. The
2 agency still possesses discretion to establish rules governing participation. Thus, it may lay down
3 rules for determining which consumers of community representative are to be allowed to
4 participate;⁴ it may require consolidation of petitions and briefs to avoid multiplicity of parties and
5 duplication of effort; and it may control the proceedings so that all participants are required to adhere
6 to the issues and refrain from introducing cumulative or irrelevant evidence.⁵

7 But it may no longer completely exclude persons who have a substantial interest in the
8 proceeding. "Any interested person" now has the right to intervene in an agency proceeding "so far
9 as the orderly conduct of public business permits." ⁶ The controlling principle was stated by a
10 federal court of appeals: "Efficient and expeditious hearing should be achieved, not by excluding
11 parties who have a right to participate, but by controlling the proceedings so that all parties are
12 required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence."⁷

13 The right to participate in agency proceedings is expanded by the Ashbacker doctrine. The Court
14 held that the commission had acted improperly: "For if the grant of one (application) effectively
15 precludes the other, the statutory right to a hearing which Congress has accorded applicants before
16 denial of their applications becomes an empty thing." ⁸ Ashbacker should not be limited to physical
17 mutual exclusiveness. Where an agency makes choices, those from whom the choices are made
18 have an interest that should be protected. ⁹

⁴ Office of Communication v. FCC, 359 F.2d at 1006. See, e.g., Palisades Citizens Assn. v. CAB, 420 F.2d at 193.

⁵ National Welfare Rights Org. v. Finch, 429 F.2d at 738.

⁶ American Communications Assn. v. United States, 298 F.2d 648, 650 (2d Cir. 1962)(quoting Federal Administrative Procedure Act §6(a), 5 U.S.C. §555(b)).

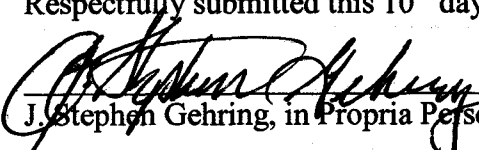
⁷ Virginia Petroleum Jobbers Assn. v. FPC, 265 F.2d 364, 368 (D. C. Cir. 1959). See Recommendation 71-6 of the Administrative Conference, 1 C.F.R. §305.71-6 (1981), intended to encourage greater participation by intervenors in agency proceedings.

⁸ Ashbacker Radio Corp. v. FCC, 326 U. S. 327 (1946).

⁹ For a case so holding, Pollack v. Simonson, 350 F.2d 740 (D. C. Cir. 1965). Compare Baptist Hosp. v. State, 500 So. 2d 620 (Fla. App. 1986); Huron Valley Hosp. v. State Health Commn., 312 N.W.2d 422 (Mich. App. 1981); Appeal of Behavior Science Inst., 436 A.2d 1328 (N. H. 1981).

1 WHEREFORE Mr. Burt requests that he be allowed to continue his participation in these
2 Administrative proceedings, and to comment, examine witnesses and introduce evidence without any
3 further interruption or exclusion.

4 Respectfully submitted this 10th day of February 2014

5
6 
7 J. Stephen Gehring, in Propria Persona

Richard M. Burt, in Propria Persona

8 **CERTIFICATE OF SERVICE**

9
10 The Original and 13 Copies of the foregoing has been mailed this 10th day February 2014 to the following:

11
12 **DOCKET CONTROL**
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington St.
15 Phoenix, Arizona 85007

16
17 A Copy of the Original of the foregoing has been mailed this 10th day February 2014 to the following:

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50 By: Richard M. Burt